

(g) Failure to use sufficient sulfur credits or allotments to offset a per-gallon cap adjustment. For a small refiner that has an approved adjustment of its per-gallon cap sulfur standard for a refinery under § 80.271, to fail to obtain (or generate) and use the required number of sulfur credits or allotments to offset the revised per-gallon cap sulfur standard under § 80.217(d).

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§ 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart shall be determined based on the sulfur level of the gasoline, measured using the methodologies specified in §§ 80.330(b) and 80.46(a). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.330(b) and 80.46(a), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the sulfur standards, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.*—(1) *Averaging violation.* Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who

causes another party to violate § 80.385(a), is liable for a violation of § 80.385(c).

(3) *Cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385 (b) occurred, is deemed in violation of § 80.385(b).

(4) *Causing a cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(b), is deemed in violation of § 80.385(c).

(5) *GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385(f) occurred, is deemed in violation of § 80.385(f).

(6) *Causing a GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(c).

(7) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.385(b) or (f) occurred, is deemed in violation of § 80.385(b) or (f), as applicable.

(8) *Causing violating gasoline to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, or oxygenate blender, who owned, leased, operated, controlled or supervised a facility from which gasoline was released into the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is deemed in violation of § 80.385(d).